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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,583	12/21/2001	Subraman Rao Cherukuri	24734	2492
20529	7590	10/31/2003	EXAMINER	
NATH & ASSOCIATES			COE, SUSAN D	
1030 15th STREET			ART UNIT	
6TH FLOOR			PAPER NUMBER	
WASHINGTON, DC 20005			1654	

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/024,583	Applicant(s) CHERUKURI ET AL.	
	Examiner Susan Coe	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 36 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The response filed August 13, 2003, has been received. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-39 are pending.

Election/Restrictions

3. In Paper No. 5, dated January 29, 2003, applicant's elected with traverse of Group I, claims 1-35, 38, and 39; hydrogenated starch hydrolysate and lactitol for species A, partially hydrogenated soybean oil for species B, lecithin for species C, dietary fibers for species D, carrageenan for species E, hydroxypropylmethyl cellulose for species F, and psyllium for species G.
4. Claims 36 and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
5. Claims 1-35, 38, and 39 are examined on the merits.

Claim Rejections - 35 USC § 102

6. Claims 1-27, 29-35, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,963,359 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that this reference does not teach the presence of two polyols in the composition. However, the reference teaches adding hydrogen starch hydrolysate, sorbitol or glycerin to the composition (see column 10, lines 47-52). These are all polyols. In fact, applicant's claims 2 and 17 specifically claim hydrogen starch hydrolysate, sorbitol and glycerin as polyols that can be used in the composition. The reference teaches that the various ingredients can be present in a variety of amounts that meet the limitations of applicant's claims (see claims).

In addition, applicant argues that the reference does not teach adding bioadhesives to the composition. However, the reference teaches adding gums to the composition (see paragraph spanning columns 10 and 11). This is specifically claimed by applicant to be a bioadhesive (see claims 11 and 26); therefore, the reference teaches adding bioadhesives to the composition.

Claim Rejections - 35 USC § 103

7. Claims 1-35, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,963,359 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that there is no motivation to substitute lactitol or sorbitol in the reference because the reference is using aqueous sorbitol while applicant is using crystalline lactitol. However, applicant is arguing limitations that are not in the claims. The claims do not specify the state of the polyols.

Applicant also reiterates the arguments made in the traversal of the 102 rejection based on this reference. Therefore, the response to the these arguments are stated above.

8. Claims 1-35, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,911,937 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that a person of ordinary skill in the art would not be motivated to modify the composition of the reference to arrive at the claimed composition because the reference composition is an aerated confection composition. Applicant's argue that the aerated component would have to be left out of the reference composition in order to arrive at the claimed composition. However, applicant's claims use the broad transitional phrase "comprising" which allows for additional components, such as an aerated component. Therefore, the reference is still considered to teach a composition that contains the claimed ingredients. The reference also teaches that the individual ingredients can be added in a wide variety of ranges. Thus, it is not considered unreasonably that a routine optimization of the amounts would lead to a composition with the same amounts as claimed by the applicant.

9. No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

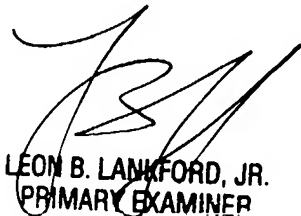
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
October 30, 2003



LEON B. LANKFORD, JR.
PRIMARY EXAMINER